IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR

: J U D G M E N T :

S.B. Criminal Appeal No.277/1988.
(Kalu Ram Vs. State of Rajasthan)

DATE OF JUDGMENT : December 22, 2006

P R E S E N T

Hon'ble Mr. Justice Gopal Krishan Vyas

Mr. R.R. Vyas for the appellant.
Mr. L.R. Upadhyay, P.P. for the State .

BY THE COURT :

This appeal is directed against the judgment passed by learned Addl. Sessions Judge No.2, Hanumangarh dated 08.07.1988 passed in Sessions Case No.82/85 whereby the appellant has been convicted for offence under Section 306, I.P.C. and sentenced to suffer rigorous imprisonment for nine years and pay a fine of Rs.2000/-, in default of payment of fine to further undergo six months' rigorous imprisonment.

The facts of the case reveal that one Ranjeet Singh s/o Asharam, r/o village Makkasar (Tehsil

Hanumangarh) made a complaint through Circle Officer, P.S. Sangaria upon which FIR was registered at Police Station Tibi. According to the allegations in the FIR it is alleged that sister of complainant Ranjeet Singh, deceased Santaro was married to accused appellant Kaluram three years ago and, out of wedlock, they had no issue. The complainant alleged that deceased Santaro had informed him that her husband was carrying on illicit relationship with his elder brother's wife Chawali and neglected her. As per the FIR, the complainant told accused many a time to desist from such acts and take care of his own wife. It is also alleged that the deceased whenever protested she was beaten by the accused and threatened to be killed. The complainant alleged that he and some persons of the village held panchayat to persuade the appellant and his family members and told the appellant to improve his conduct and take care of his wife; but, despite having been advised several times by the complainant and villagers the accused refused to allow anybody to interfere in his relations with his brother's wife. It is alleged in the FIR that the appellant assaulted the deceased many a time. It was informed by the complainant that on 24.06.1984, the brother-in-law of the appellant, Sohanlal came to him and told him that Santaro has been hanged. Upon being informed, the complainant went to the house of the appellant where his sister Santaro was hanging by a rope and her feet touched the floor. It is alleged by

the complainant in the FIR that accused Kaluram confessed that he has committed the mistake (crime) and further told that, "मैंने चावली के कहने से उसे मारकर लटका दिया है।" Upon this information, at the first instance, police registered case under Section 302 I.P.C. for the purposes of investigation. After investigation was conducted, the police filed challan for commission of offence under Section 306, I.P.C.

After filing of challan, the trial Court, however, thought it proper to frame charges against the appellant accused for commission of offence under Section 302, I.P.C. and, in the alternative, for offence under Section 306, I.P.C. At the time of filing the challan papers, the prosecution arrayed as many as 19 witnesses for examination before the Court, but, in fact, only 7 witnesses were examined by the prosecution viz., P.W.-1 Ramchandra, P.W.-2 Sohanlal, P.W.-3 Gopiram r/o Makkasar, P.W.-4 Ranjeet, P.W.-5 Ramswaroop, P.W.-6 Dr. Narendra Godara and P.W.-7 Mohan Singh.

After recording the statement of the accused under Section 313, Cr.P.C. the trial Court convicted and sentenced the appellant as noted above.

I have carefully gone through the impugned judgment and record of the case.

Challenging the impugned conviction and sentence, learned counsel for the appellant vehemently argued

that there is no evidence on record to prove the charge against the accused. It is contended that after appreciating the evidence on record the trial Judge has reached categorical finding that it is not a case of murder and the entire evidence on record pointedly indicates that it is a case of suicide. Learned counsel for the appellant drew attention of the Court towards the statement of the accused recorded under Section 313, Cr.P.C. in which the accused stated that his father-in-law had come to carry his daughter Santaro with him but he (accused) did not send her which enraged her. The accused further stated that after that he went to irrigate the field. Learned counsel for the appellant urged that there is no material evidence on record to prove the charge of abetment against the appellant. According to him the father of the deceased was not examined at the trial by the prosecution nor the members of the Panchayat allegedly called by the brother of the deceased were produced before the Court to prove the allegations about the conduct of the accused. It is argued by learned counsel for the appellant that both Ranjeet, P.W.-4 and Gopiram, P.W.-3 were already at inimical terms with the accused and, in the absence of independent witnesses, for any conclusion their testimony alone cannot be relied upon, more so when people had already gathered outside the house of the accused before arrival of these witnesses. Learned counsel for the appellant further contended that even

if the theory of having illicit relations with another woman by the accused is taken to be true by itself it does not lead to the conclusion that the appellant forced the deceased to commit suicide. Learned counsel for the appellant contended that the finding arrived at by the trial Court in respect of abetment is totally perverse and erroneous and against the settled principles of law.

Per contra, learned Public Prosecutor supported the impugned judgment. It is contended by the learned Public Prosecutor that the learned trial Judge has meticulously examined the evidence coming on record and the record is replete with prosecution evidence to establish the charge of abetment against the appellant. According to him, the appellant did not desist from maintaining illicit relations with his brother's wife Chawali despite repeated admonitions and whenever his own wife protested to it he would only belabour her. The learned Public Prosecutor contended that the statement of the complainant is fully supported by evidence of other prosecution witnesses and, therefore, it is obvious that the accused appellant is guilty of committing the offence of abetment. It is argued by learned Public Prosecutor that no interference is called for in the impugned judgment and the appellant has been rightly convicted and sentenced for the offence proved against him on the record beyond any shadow of doubt.

Dealing with the argument of learned counsel for

the appellant that the accused-appellant never instigated the deceased to commit suicide and he has not aided committing suicide by the deceased in any manner and, therefore, it cannot be said that the death of the deceased Mst. Santaro was result of abetment committed by the accused, it is necessary to consider the provisions of Section 107, I.P.C. The section reads as under :

> "107. Abetment of a thing-A person abets the doing of a thing, who -
> First-Instigates any person to do that thing; or
> Secondly-Engages with one or more other person or persons in any conspiracy for the doing of that thing, if an act or illegal omission takes place in pursuance of that conspiracy, and in order to the doing of that thing; or
> Thirdly-Intentionally aids, by any act or illegal omission, the doing of that thing.

Explanation 2 to the section clearly postulates that whoever, either prior to or at the time of the commission of an act, does anything in order to facilitate the commission of that act, and thereby facilitates the commission thereof, is said to aid the doing of that act. With reference to the facts of the present case it may be noted that normally no one commits suicide unless there are strongly compelling reasons for doing so and thus a strong motivating force acts to bring about such commission of suicide. In the present case, facts established by evidence pointedly indicate to the guilt of the accused.

In the present case, admittedly the appellant was

married to the deceased just three years before the incident. Nothing has come on record to suggest cruel treatment by the wife towards the accused husband and, on the contrary, there is sufficient material on record to show that the accused had transformed the wedlock into accursed agony for the deceased Mst. Santaro. The evidence indicates that the accused associated in illicit terms with his brother's wife and left his own wife to live for nothing. Whenever the deceased objected to it she was beaten to become a silent spectator of his misdeed. Dejection and despondency, all generated by the accused brought about the commission of suicide by Mst. Santaro.

Both P.W.-1 Ramchandra and P.W.-2 Sohanlal are somehow relatives of the accused and both have deposed that the accused-appellant was having illicit relations with the wife of his elder brother and the deceased objected to it. Sometimes when she objected she was beaten and she made a complaint of it to her brother. Both P.W.-1 Ramchandra and P.W.-2 Sohanlal only further strengthen the testimony of complainant P.W.-4 Ranjeet. Testimony of the prosecution witnesses goes to establish it sufficiently that the accused not only neglected the deceased but also meted out to her maltreatment. Efforts were made to bring him round to rightful conduct by holding panchayats twice but the accused gave ear to the advice of none.

Since the accused appellant by his conduct created the situation which drove his wife to commit suicide

the case squarely falls within the ambit of Section 306, I.P.C. The conduct of the accused appellant tantamounts to inciting or provoking or virtually pushing his wife into that desperation of no return situation which compelled her to put an end to her miseries by cutting short the thread of her life. From the evidence on record, I find no perversity in the finding recorded by the trial Court about the guilt of the accused-appellant.

In the instant case, the deceased committed suicide just after three years of marriage and the fact is established on record that the appellant husband indulged in beating, humiliating and subjecting to mental torture the deceased all along this short span of wedlock. Therefore, having regard to all the facts and circumstances of the case, the Court can very well draw presumption against accused appellant that commission of suicide by deceased has been abetted by the accused appellant.

So far as other arguments advanced by learned counsel for the appellant with regard to medical evidence may be concerned, it does not appeal to the conscience of the Court that the accused appellant is innocent. Conscience of the Court is satisfied after scanning and appreciating the evidence on record, which unflinchingly satisfies the conclusion that the commission of suicide by Mst. Santaro was brought about by way of conduct of the appellant amounting to instigation and provocation and, therefore, it is not

a fit case at all for considering suggestion of granting benefit of doubt to the appellant.

It is the conscience of the Court that testifies utmost to the finding arrived at by the Court. Reasonable doubts permit commensurate inferences and suggestions inclining to the favour of the accused but where the Court has conscientiously arrived at the finding of guilt on the basis of material on record, there is no room for doubts to suggest theories otherwise. The present case is replete with evidence to arrive at the conclusion that the accused, solely by his own conduct, facilitated and brought about the occurrence of committing suicide by the deceased Mst. Santaro.

In his testomony, P.W.-1 Ramchandra supports the prosecution version and from his statement it is apparent that the fact of accused having illicit relations with his sister-in-law and consequently coming to brawl with his own wife was a common knowledge among several people. His evidence corroborates the allegation of the complainant that the accused used to beat his wife on account of her protests against his conduct. Sohanlal, P.W.-2 also deposed before the Court to the same effect and admitted that panchayat was called to persuade the accused to behave in proper manner and desist from having illicit relations with his brother's wife.

A careful perusal of the judgment only reveals that the suggestion of culpable homicide in the

present case is primarily brushed aside on account of the medical evidence coming on record. Dr. Narendra Godara – one of the members of the medical board conducting the post postmortem examination clearly opined that death was caused due to asphyxia resulting from hanging. Neither in the postmortem report nor in his statement before the Court Dr. Narendra Godara evinced any suggestion of homicidal death. According to this witness, as also mentioned in the postmortem report, there was profuse bleeding from the mouth, nose and ears of the deceased. He has stated that he did not notice any external injury on the dead body except for the injury caused by the ligature.

It has come on record that the feet of the dead body of Mst. Santaro touched the floor and her knees were bent a little forward. This is the only circumstance on record which leads to an inference of homicidal death, however, there are reasons which compel the Court to prudently weigh the merit of the suggestion inasmuch as hanging may result in the neck being lengthened and continuous weight may stretch the rope; and, therefore, unless cogent evidence even by way of circumstantial evidence may corroborate the factum of homicidal death the Court cannot arrive at the conclusion of guilt under Section 302 I.P.C.

From the evidence on record, one thing is apparent that the accused had extramarital illicit relationship with his brother's wife Chawali and he maltreated his own wife deceased Santaro and this topic had been the

subject-matter of calling twice the pachayat by the brother of the deceased and village people. Evidence on record reveals that the deceased had complained about the conduct of her husband who was even keeping himself aloof from her company and belaboured her whenever she protested. In his statement recorded under Section 313, Cr.P.C. the accused stated that father of the deceased had come to take Mst. Santaro with him but he did not send her and therefore she was annoyed. But it cannot be accepted as such because this incident was almost a fortnight ago than the time of the fatal occurrence.

From the overall appreciation of the evidence on record, it is proved beyond reasonable doubt that the accused is the progenitor of the circumstances which forced the deceased to commit suicide. As a sequel to it, I do not find any ground for interference in the finding of guilt recorded by the trial Court against the appellant for committing offence under Section 306, I.P.C. Consequently, the conviction of the appellant and sentence awarded to him by the trial court are maintained and he shall serve out the remaining sentence.

As a result, this appeal fails and is hereby dismissed. The appellant is on bail. His bail bonds stand forefeited.

Before parting with the case, I am constrained to observe that in this case the prosecution appears to have deliberately left out much to the aid of the

accused. As many as 19 witnesses had been arrayed for examination before the Court at the trial in the list furnished with the challan papers. However, only 7 witnesses were produced. Since the complainant had alleged that the accused made an extra-judicial confession before him about having killed the deceased and from the prosecution case it is obvious that there were other village persons also present it was obligatory for the prosecution to lead evidence of the independent witnesses. Moreover, even P.W.-6 Dr. Narendra Godara seems to have deliberately refrained from observing external injuries. The trial Court observed in the impugned judgment about external injuries which find no mention, what to say about any satisfactory explanation, at the hands of the medical experts. When the expert's opinion goes unquestioned under the Evidence Act the duty of the expert is more accentuated but, dismayingly, the medical board is all silent about any external injury which betrays board's bonafide. There is clear reflection in the present case that Court has been prevented on account of non-production of evidence from arriving at the finding of guilt for commission of offence under Section 302, I.P.C. There was thus no option left with the trial Court than to acquit the accused from the charge of committing offence under Section 302, I.P.C.

Let a copy of this judgment be sent to the Chief Secretary, Government of Rajasthan, Jaipur.

(Gopal Krishan Vyas) J.